

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SERENA MARDIS)	
Claimant)	
VS.)	
)	
CEDAR VIEW GOOD SAMARITAN CENTER)	Docket No. 233,404
Respondent)	
AND)	
)	
KANSAS EMPLOYERS WORKERS COMPENSATION FUND)	
Insurance Carrier)	

ORDER

Claimant appealed the preliminary hearing Order dated June 24, 1998, entered by Judge Nelsonna Potts Barnes.

ISSUES

The Judge denied claimant's request for temporary total disability benefits for the period after she was released to return to work with restrictions. The only issues before the Appeals Board on this review are:

- (1) Does the Appeals Board have jurisdiction to review this preliminary hearing Order?
- (2) If so, did the Judge err?

FINDINGS OF FACT

After reviewing the record compiled to date, the Appeals Board finds:

- (1) Claimant alleges she injured her left foot at work on April 4, 1998.
- (2) On April 30, 1998, respondent terminated claimant for reasons it alleges are amply justified and unrelated to claimant's injury.
- (3) On June 2, 1998, orthopedic surgeon Naomi N. Shields, M.D., released claimant to return to work to a sitting job only.

(4) Respondent now contends it could accommodate claimant's medical restriction and, therefore, claimant would now be working had she not been terminated for cause.

CONCLUSIONS OF LAW

This appeal should be dismissed.

The Appeals Board's jurisdiction to review preliminary hearing findings and orders is limited by K.S.A. 1997 Supp. 44-534a to the following issues:

- (1) Did the worker sustain an accidental injury?
- (2) Did the injury arise out of and in the course of employment?
- (3) Did claimant provide timely notice and claim?
- (4) Do certain defenses apply that go to the very basis and compensability of the claim?

Further, K.S.A. 1997 Supp. 44-551 limits the review of preliminary hearing orders to only those instances where the administrative law judges have exceeded their jurisdiction and authority.

The issue of whether an individual is temporarily and totally disabled within the meaning of K.S.A. 44-510c is a question of fact that the judges are specifically empowered to determine at the preliminary stage of the proceeding. It is not a preliminary hearing finding that is reviewable from a preliminary hearing order. But, as provided by K.S.A. 1997 Supp. 44-534a, the finding is not binding and is subject to modification upon a full hearing on the claim.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this appeal should be, and hereby is, dismissed.

IT IS SO ORDERED.

Dated this ____ day of August 1998.

BOARD MEMBER

c: Joseph Seiwert, Wichita, KS
Edward D. Heath, Jr., Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director